

SEP 10 2004

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DEREKE LEE ALFRED,

Petitioner - Appellant,

v.

GEORGE M. GALAZA, Warden,

Respondent - Appellee.

No. 03-17228

D.C. No.

CIV. S 00-1239 LKK KJM P

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Argued and Submitted August 13, 2004
San Francisco, California

Before: PREGERSON and KOZINSKI, Circuit Judges, and RHOADES,** District Judge.

Dereke Lee Alfred, a § 2254 petitioner, raises an Eighth Amendment challenge to his sentence of life imprisonment with a mandatory term of 26 years

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable John S. Rhoades, Sr., Senior United States District Judge for the Southern District of California, sitting by designation.

which was imposed pursuant to California's "Three Strikes" law. On direct appeal, the California Court of Appeal rejected Alfred's Eighth Amendment claim. The California Supreme Court denied Alfred's petition for review.

The only clearly-established Supreme Court law at the time of the California Court of Appeal's decision was the general principle that a sentence for a term of years must not be "grossly disproportionate" to the offense. *See Lockyer v. Andrade*, 538 U.S. 63, 72 (2003). This is not one of those "exceedingly rare" and "extreme" cases where application of the general gross disproportionality principle will lead to a finding of an Eighth Amendment violation. *Id.* at 73 (citing *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy J., concurring in part and concurring in the judgment)). Accordingly, we AFFIRM the district court's decision denying Alfred's habeas petition.